



Comptroller General
of the United States

1026197

Washington, D.C. 20548

Decision

Matter of: Tri-State Motor Transit Company

File: B-254372, et al.

Date: July 15, 1994

DIGEST

When the Military Traffic Management Command issued a letter to the industry stating that it no longer would route wheeled vehicles as Freight All Kinds (FAK) shipments, it clearly indicated that wheeled vehicles were excluded from the FAK commodity description. Accordingly, the General Services Administration cannot rate a subsequent wheeled-vehicle shipment as FAK.

DECISION

Tri-State Motor Transit Company, a motor carrier, requests review of the General Services Administration's (GSA) denial of its claims under various Government Bill of Lading (GBL) transactions for additional charges to transport wheeled vehicles. We reverse GSA's settlements.

The facts involving GBL C-7,749,335 are representative of the various transactions. On April 30, 1990, Tri-State moved two military trucks from Tobyhanna Army Depot, Pennsylvania, to Fort Sill, Oklahoma, and billed for the service according to Freight All Kinds (FAK) charges in its Tender 341. The GBL, prepared by the transportation officer at Tobyhanna on April 26, 1990, indicated that the shipment would move as FAK. Later, Tri-State sought an additional \$392.50 under its Tariffs 4065C and 100A, maintaining that Tender 341 did not apply to self-propelled vehicles. In this respect, by notice of April 24, 1990, the Military Traffic Management Command (MTMC) advised the carrier industry that MTMC no longer would route wheeled vehicles as FAK. MTMC revised the governing Department of Defense (DOD) publication, MTMC's Freight Traffic Rules Publication

¹The GBL transactions include C-5,593,903, C-7,750,848 and C-7,750,852, (our file B-254372); C-7,749,335 (B-254826); D-0,556,273 and D-0,556,269, (B-256087); C-8,001,842 (B-256080); and C-7,739,935 and C-7,749,726 (B-256086).

(MFTRP) 1A, on October 19, 1992, effective April 24, 1990, to exclude self-propelled vehicles as FAK.

Tri-State argues that beginning April 24, 1990, MFTRP 1A effectively precluded classifying a self-propelled vehicle for shipment as FAK, so that FAK rates cannot be applied to these shipments. MTMC agrees with Tri-State.

GSA is concerned about applying MTMC's 1992 change in MFTRP 1A to any shipment already executed, which GSA suggests would constitute an improper retroactive modification of the contracts of carriage for such shipments. GSA points out that the shipment involved in GBL C-7,749,335, for example, moved more than 2 years before MFTRP 1A was revised (October 1992) to reflect the exclusion of the self-propelled vehicles from FAK classification. GSA also notes that the April 24 letter from MTMC headquarters to the carrier industry, which is cited in the October 1992 revision as the basis for that revision, did not specifically exclude vehicles from FAK - it merely stated that MTMC "will no longer route DOD wheeled vehicles as FAK" or consider FAK rates on file in evaluating the low-cost carrier for these movements. Finally, GSA suggests that even if the April 24 letter effectively did change DOD policy, a change should not have been effective until each carrier submitted a new tender under a new classification scheme.

We do not agree with GSA that the effect of applying the policy change to these shipments would represent an improper retroactive modification of the shipment contracts. MTMC's April 24 letter to the industry, which announced DOD's procurement policy, preceded or was concurrent with each shipment; the October 1992 revision to MFTRP 1A simply formalized the 2-year old DOD policy for purposes of the publication. Although the GBLs suggested FAK rates would apply, the fact is that the DOD transportation officials who prepared them were required to follow MTMC's routing policies for that traffic.²

²Paragraph 17-13a(1) of the Defense Traffic Management Regulation, Army Regulation (AR) 55-355, gives MTMC area commands authority to route general commodity shipments of 10,000 pounds or more. In arranging transportation of such shipments, local transportation officers must obtain routing orders from one of the area commands; routing orders include instructions designating a mode, carrier, applicable rate, minimum weight and tender authority. Id., paras. 17-5 and 17-6. As the routing authority, the area command also instructs on the use of FAK. Id., at Figure 32-1, Item 21a(2).

Moreover, we do not interpret the April 24 letter as narrowly as does GSA. The letter clearly stated that it no longer was DOD policy to classify wheeled vehicles as FAK; consequently, thereafter the only proper freight classifications for such vehicles were specific commodity descriptions.³ We have held that when MTMC precludes a DOD component from accepting a carrier's rate tender, GSA cannot apply the tender to an Army shipment. See Riss International, 65 Comp. Gen. 912 (1986). Here, MTMC effectively retracted the authority of DOD officials to accept an FAK tender to the extent that the tender allowed for the transportation of a wheeled vehicle. It makes no difference that an installation transportation officer might not have been aware of the change in policy and prepared a GBL to ship such a vehicle as FAK. Id.

Accordingly, in the absence of an otherwise applicable Tri-State tender offering lower rates, Tri-State's tariff rates would apply to shipments of wheeled vehicles shipped after April 23, 1990. GSA's settlements are reversed.

/s/ Seymour Efros
for Robert P. Murphy
Acting General Counsel

³Under para. 12-1a of AR 55-355, the MTMC commander determines proper freight classification, rates, charges, rules and regulations on DOD traffic.